HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal Nos.2294 and 2295 of 2005

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Writ Appeal No.2294 of 2005

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Between:

Dr.D. Ram Kishan and another … Appellants

And

NTR University of Health Sciences – AP
Vijayawada, represented by its Registrar
and another

… Respondents

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Counsel for the appellants: Sri G. Vidyasagar

Counsel for the respondents: Sri D.V. Nagarjuna Babu,
for NTR University

Writ Appeal No.2295 of 2005

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Between:

Dr.B. Jagadishwar … Appellant

And

NTR University of Health Sciences – AP,

Vijayawada represented by its Registrar

and another. … Respondents

Counsel for the appellant: Sri G. Vidyasagar

Counsel for the respondents: Sri D.V. Nagarjuna Babu,

for NTR University

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::JUDGMENT::

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February 15, 2006

Per G.S. Singhvi, CJ

These appeals are directed against order dated 21-11-2005 passed by the learned Single Judge whereby he dismissed the writ petitions filed by the appellants for quashing the decision of NTR University of Health Sciences (hereinafter described as 'the University') declining their prayer for being declared 'pass' in M.S. (Orthopaedics) and M.D. (Paediatrics).

The appellants joined three years Post-Graduate Medical Courses in Orthopaedics and Paediatrics in 2001-02. At the end of first year of the course, they appeared in the examination of the theory paper of 'Basic Medical Sciences' and passed the same by securing 50 or more marks out of 100. Dr.D. Ram Kishan (appellant No.1 in W.A.No.2294 of 2005) secured 52 marks. Dr.B. Elizabeth (appellant No.2 in W.A.No.2294 of 2005) secured 50 marks and Dr.B.Jagadishwar (appellant in W.A.No.2295 of 2005) secured 55 marks. Later on, they appeared in the remaining three theory papers and secured 144, 144 and 142 marks respectively out of 300. The University declared them 'fail' on the premise that they had not secured 50%

marks in the three theory papers. They represented for being declared ‘pass’ by asserting that in terms of Regulation 14 (4) (b) and (c) of “The Post-Graduate Medical Education Regulations, 2000” (for short ‘the Regulations’) framed by the Medical Council of India (for short ‘the MCI’) in exercise of its power under Section 33 read with Section 20 of the Indian Medical Council Act, 1956 (for short ‘the Act’) marks secured in all the theory papers are required to be clubbed for the purpose of determination of percentage of marks and they were entitled to award of 5 grace marks in terms of the policy decision taken by the University. However, their plea was rejected vide letter dated 13-7-2005 on the ground that as per Resolution dated 22-4-2000 passed by Academic Senate of the University, Clinical Post Graduate students are required to pass examination in “Basic Medical Sciences” before appearing in final examination and, in the meeting of the Executive Council of the University held on 28-1-2004, it was decided that the marks secured in the theory paper of “Basic Medical Sciences” are not to be clubbed with the marks secured in other papers.

The appellants challenged the aforementioned decision of the University by contending that in terms of Regulation
14 (4) (b) and (c) of the Regulations, the marks secured in all theory papers are to be clubbed for the purpose of determining the percentage and the decision taken by the University to exclude the marks of the paper of “Basic Medical Sciences” is per se arbitrary and ultra vires to the Regulations.

In the counter filed on behalf of the University, it was averred that in terms of Resolution dated 22-4-2000 passed by the Academic Senate, which was approved by the Executive Council on 3-5-2000, Post-Graduate Students (Clinical Courses) of 2000-01 batch and onwards are required to pass theory paper of “Basic Medical Sciences” conducted at the end of first year by securing minimum 50 marks out of 100. Thereafter, he / she can appear in the remaining theory papers and pass the same by securing 50% marks. According to the University, each of the remaining three theory papers is of 100 marks and a candidate can be declared ‘pass’ only by securing minimum 150 marks, and the marks obtained in the paper of “Basic Medical Sciences” are not taken into consideration for determining the pass percentage. In the additional counter-affidavit filed on behalf of the University it was averred that, vide Resolution dated 5-10-2005, the Academic Senate amended the Regulations relating to Post-Graduate Medical Degree Courses Examinations and

made provision for clubbing of marks of all the theory papers for the purpose of determination of the percentage marks secured by the candidate, but the writ petitioners cannot take advantage of the same because the amendment has been made applicable prospectively.

The learned Single Judge held that the University had the right to make regulation for exclusion of the marks secured in the paper of “Basic Medical Sciences” while determining the percentage of the marks secured by the candidate and, therefore, its decision to declare the writ petitioners as ‘fail’ cannot be termed as arbitrary. In the opinion of the learned Single Judge, the decision of the University to exclude the marks of the paper of “Basic Medical Sciences” was not ultra vires to the Regulations framed by the MCI.

We have heard learned counsel for the parties. Regulation 14 (4) (b) and (c) of the Regulations, which has bearing on the decision of these appeals, read as under:

> “**14. Examinations:**
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> …
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> 4) I. Doctor of Medicine (M.D.) / Master of Surgery (M.S.)
>
> …
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> b) Theory:
>
> i. There shall be four theory papers.
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> ii. Out of these, one shall be of Basic Medical Sciences and one shall be of recent advances.
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> iii. The theory examinations shall be held sufficiently earlier than the clinical and practical examination, so that the answer books can be assessed and evaluated before the start of the clinical/practical and oral examinations:
>
> Provided that after five years from the commencement of these regulations, there shall be one theory paper of multiple choice questions, unless any institution wants to have such paper earlier.
>
> c) Clinical / Practical and Oral:
>
> i. Clinical examination for the subjects in Clinical Sciences shall be conducted to test the knowledge and competence of the candidates for undertaking independent work as a

specialist/teacher for which candidate shall examine a minimum one long case and two short cases.

ii. Practical examination for the subjects in Basic Medical Sciences shall be conducted to test the knowledge and competence of the candidate for making valid and relevant observations based on the experimental/laboratory studies and his ability to perform such studies as are relevant to his subject.

iii. The oral examination shall be thorough and shall aim at assessing the candidate's knowledge and competence about the subject, investigative procedures, therapeutic technique and other aspects of the specialty which form a part of the examination.

A candidate shall secure not less than 50% marks in each head of passing which shall include (1) Theory, (2) Practical including clinical and viva voce examinations."

Regulation XI of the Regulations and Curriculum of Postgraduate Medical Education, M.S. (Orthopaedics) framed by the University also reads as under:

"**XI. Scheme of Examination:**

P.G. Degree Examinations in any subject shall consist of dissertation, Theory Examinations, Clinical Examinations and Viva-Voce.

Dissertation:

Every candidate shall carryout the work and submit the dissertation as indicated, vide S.No.VIII. The acceptance of the dissertation shall be a pre-condition for the candidate's eligibility to appear for the final examination.

Theory (written) Examination:

Theory examination for PG Degree courses shall consist of four question papers, each of three hours duration. Each paper shall carry 100 marks with ten questions of ten marks each. Out of the four papers, the 1st paper in clinical subjects will be in basic medical sciences with emphasis on applied aspects and the examination will be conducted at the end of 1st year. The student must pass the Basic Sciences examination before appearing for the final exam which consists of 3 question papers at the end of 3rd year in the specialty concerned.

…

Criteria for pass in University Examinations:

The candidate shall obtain a minimum of 50% marks in Theory, Clinics /

Practicals and aggregate to be declared as passed."

Sri G. Vidyasagar, learned counsel for the appellants argued that the decision of the University to declare the appellants 'fail' is ex facie contrary to the scheme of the Regulations framed by the MCI and the learned Single Judge committed an error by upholding the said decision on the basis of the resolutions passed by Academic Senate and Executive Council of the University to exclude the marks of the paper of "Basic Medical Sciences". He further argued that the decision taken by the Academic Senate and Executive Council of the University cannot over-ride the Regulations framed by the MCI, which are statutory in character and have over-riding effect. Learned counsel pointed out that the Regulations framed by the MCI were notified on 7-10-2000 and, therefore, the resolution passed by the Academic Senate on 22-4-2000 and its approval by the Executive Council on 3-5-2000 can have no bearing on the entitlement of the candidate to be declared passed on the basis of the aggregate marks secured in all the theory papers. In support of his argument that the Regulations framed by the MCI have over-riding effect, qua the decision of the other bodies like University, Sri Vidyasagar relied on the judgments of the Supreme Court in **Medical Council of India v. State of Karnataka**, **Dr.Preeti Srivastava v. State of M.P.**, and **State of Madhya Pradesh v. Gopal D. Tirthani**.

Sri D.V. Nagarjuna Babu, learned counsel for the University, supported the order of the learned Single Judge and argued that the decision taken by the Academic Senate of the University on 22-4-2000, which was approved by the Executive Council on 3-5-2000, as also the decision taken in the meeting of the Executive Council held on 28-1-2004 to exclude the marks of the paper of "Basic Medical Sciences" cannot be declared ultra vires to the Regulations framed by the MCI because the same are not inconsistent with the Regulations framed by the MCI. Learned counsel submitted that the Regulations framed by the MCI do not lay down the scheme of examination and, therefore, the decision of the University to hold the examination of theory papers in two stages cannot be treated as inconsistent with the Regulations. Sri Babu conceded that by virtue of the decision taken by the Academic Senate on 5-10-2005, the marks of all theory papers are required to be clubbed, but submitted that the appellants cannot take advantage of that decision because the same has been made applicable prospectively and there is no challenge to that part of Resolution dated 5-10-2005.

We have thoughtfully considered the respective submissions. Till 3-1-1977, education was a State subject under Entry 11 in List II (Entry 11 — "education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III"). By the 42nd Constitutional Amendment Act, 1976, Entry 11 was deleted and it was placed in the Concurrent List by enlarging the existing Entry 25. Relevant Entries 63 to 66 of List I (Union List) and Entries 25 and 26 of List III (Concurrent List) in the Seventh Schedule read as under:

"**List I (Union List)**

"**63.** The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the (Delhi University; the University established in pursuance of Article 371-E;) any other institution declared by Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65. Union agencies and institutions for—

(*a*) professional, vocational or technical training, including the training of police officers; or

(*b*) the promotion of special studies or research; or

(*c*) scientific or technical assistance in the investigation or detection of crime.

66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

List III (Concurrent List)

"**25.** Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

26. Legal, medical and other professions."

The Indian Medical Council Act, 1956 is relatable to Entry 66 of List I (Union List). It prevails over any State enactment to the extent the State enactment is repugnant to the provision of the Act even though the same may be relatable to Entry

25 or 26 of List III (Concurrent List). Regulations framed under Section 33 of the Medical Council Act with the previous sanction of the Central Government are statutory. These regulations are framed to carry out the purposes of the Act and for various purposes mentioned in Section 33. If a regulation falls within the scope of Section 33 of the Act, it will have mandatory force and will over-ride all similar statutory provisions made by the State and its instrumentalities like the Universities.

In **Medical Council of India v. State of Karnataka**[1] (supra), the Supreme Court considered the question whether the State Government and the Universities can tinker with the intake capacity of the colleges determined by the Medical Council of India and answered the same in negative. The proposition laid down in that decision reads as under:

> "It is the Medical Council which is primarily responsible for fixing standards of medical education and over seeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. The Medical Council Act is relatable to Entry 66 of List I of Schedule 7 to Constitution. It prevails over any state enactment to the extent of repugnancy. The State Acts, namely, Karnataka Universities Act and Karnataka Capitation Fee Act must therefore give way to the Central Act, namely, the Indian Medical Council Act, 1956. Karnataka Capitation Fee Act was enacted for the sole purpose of regulation in collection of capitation fee by colleges and for that the State Government is empowered to fix the maximum number of students that can be admitted, but that number cannot be over and above that fixed by the Medical Council as per the Regulations. Chapter IX of the Karnataka Universities Act, which contains provision for affiliation of colleges and recognition of institutions, applies to all types of colleges and not necessarily to professional colleges like medical colleges. Sub-sec.(10) of S.53, falling in Chap.IX of Universities Act provides for maximum number of students to be admitted to course for studies in a college and that number shall not exceed the intake fixed by the University or the Government. But this provision has again to be read subject to the intake fixed by the Medical Council under its Regulations. After the insertion of Ss.10A, 10B and 10C in the Medical Council Act, the Medical Council has framed regulations with the previous approval of the Central Government which were published in the Gazette of India dated September 29, 1993. Any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/higher specialities) has to apply to the Central Government for the permission along with the permission of the State Government and that of the university with which it is affiliated and in conformity with the regulations framed by the Medical Council. No medical college can admit any

student in excess of its admission capacity fixed by the Medical Council subject to any increase thereof as approved by the Central Government. Ss.10A, 10B and 10C of Medical Council Act will prevail over S.53 (10) of the State Universities Act and S.41 (b) of the State Capitation Fee Act."

In **Dr.Preeti Srivastava v. State of M.P.**[2] (supra), the Constitution Bench, by a majority judgment, affirmed the decision of the three Judges Bench in **Medical Council of India v. State of Karnataka**[1] (supra) and laid down the following propositions:

1) "Under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe,
inter alia, standards of postgraduate medical education. In the exercise of its powers under Section 20 read with Section 33 the Indian Medical Council has framed regulations which govern postgraduate medical education. These regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 of List III, make rules and regulations which are in conflict with or adversely impinge upon the regulations framed by the Medical Council of India for postgraduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List III is subject to Entry 66 of List I.

2) Secondly, it is not the exclusive power of the State to frame rules and regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254.

3) Under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education including postgraduate medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act, an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. The universities must necessarily be guided by the standards prescribed under Section 20 (1) if their degrees or diplomas are to be recognized under the Medical Council of India Act. The scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council."

From the above noted judgments, it is clear that the Regulations framed by the MCI which has been set up as an expert body to control the minimum standard of medical education including post graduate education are binding and the State cannot, in exercise of the power under Entry 25 of List III, make Rules or Regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India. The universities created under the State Acts are also bound by the Regulations framed by the MCI and in case of conflict between the Regulations framed by the MCI on the one hand and the statutory instruments framed by the State Government or the universities and other institutions established by or under the law enacted by the Legislature, the former would prevail.

We shall now revert to the facts of the cases in hand. Regulation 14 (4)(b), which contains the scheme of examination, lays down that there shall be four theory papers, out of which, one shall be of “Basic Medical Sciences” and one of “recent advances”. The theory examinations are to be followed by clinical/practical and oral examination. It also provides that a candidate shall secure not less than 50% of marks in each head of passing i.e., theory and practical including clinical and viva voce examinations. There is nothing in the language of Regulation 14 (4) (b) and (c) from which it can be inferred that the marks secured by the candidate in four theory papers are to be segregated for the purpose of calculating percentage or that the marks of the paper of “Basic Medical Sciences” are to be excluded for the purpose of calculating the percentage of marks. Resolutions dated
22-4-2000 and 3-5-2000 passed by Academic Senate and Executive Council of the University for separately holding examination in the paper of “Basic Medical Sciences” at the end of first year do not appear to be inconsistent with the Regulations framed by the MCI, but the subsequent decision taken by the Executive Council to exclude the marks of the paper of “Basic Medical Sciences” and to determine the percentage of marks on the basis of total marks secured in three theory papers only is certainly contrary to Regulation
14 (4)(b) and (c) which, as mentioned above, contains an explicit provision for counting of marks under each head of passing i.e., theory and clinical etc. Regulation 14 (4) (b) and (c) do not provide for segregation of marks of any particular paper for the purpose of determining the percentage of marks. Therefore, the decision of the University to bifurcate the theory papers in two segments and

exclude the marks secured in the “Basic Medical Sciences” has to be treated as inconsistent of the Regulations.

If the correctness of the decision taken by the University to declare the appellants as ‘fail’ is examined in the light of the above, then there is no escape from the conclusion that the same is ultra vires to the Regulation framed by the MCI which laid down that a candidate should secure not less than 50% marks in each head of passing i.e., (1) Theory, (2) Practical, including clinical and viva voce examinations. As a corollary, order dated 13-7-2005 rejecting the representation of the appellants that they be declared ‘pass’ by adding marks of the paper of “Basic Medical Sciences” and award of grace marks, is liable to be declared as illegal.

It appears to us that attention of the learned Single Judge was not drawn to the law laid down by the Constitution Bench of the Supreme Court in **Dr.Preeti Srivastava v. State of M.P.**[2] (supra) and this appears to be the reason why he upheld the validity of the decision taken by the University to exclude the marks on the paper of “Basic Medical Sciences” without properly appreciating the binding character of the Regulations framed by the MCI and the fact that the decision of the University was inconsistent with the Regulations. We are sure that if attention of the learned Single Judge had been drawn to the law declared by the Supreme Court, which is binding on the High Court under Article 141 of the Constitution, the conclusion recorded by him on the validity of the decision of the University would have been different. Be that as it may, in view of the contrary conclusion reached by us, the order of the learned Single Judge cannot be sustained.

In the result, the appeals are allowed. The order of the learned Single Judge is set aside. As a sequel to this, the decision of the University to declare the appellants ‘fail’ in Post Graduate Courses of M.S. (Orthopaedics) and M.D. (Paedetrics) is declared illegal and quashed. The University shall now calculate the percentage of marks secured by the appellants in all the theory papers and declare them passed by giving them the benefit of the grace marks. The needful be done within two weeks from the date of presentation of the certified copy of this order.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

February 15, 2006

svs